



Agenda Date: 4/25/01

Agenda Item: 2C

STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

ENERGY

I/M/O The Electric Discount and Energy)

Competition Act of 1999 – Customer)

Account Services - Motions for)

Reconsideration)

ORDER ADDRESSING MOTIONS

Docket No. EX99090676

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated January 8, 2001, the Mid-Atlantic Power Supply Association (MAPSA) moved for reconsideration of the Board's Orders dated December 6, 2000 and December 22, 2000. These Orders addressed the Customer Account Services (CAS) proceedings of: (i) New Jersey Natural Gas Company ("NJNG"); and (ii) Atlantic City Electric Company d/b/a Conectiv Power Delivery ("Conectiv"), Public Service Electric and Gas Company ("PSE&G") and Jersey Central Power and Light Company d/b/a GPU Energy ("GPU"). Specifically, MAPSA is seeking reconsideration with respect to the Board's decision to defer consideration of a customer response card. On January 10, 2001, the Division of the Ratepayer Advocate (RPA or Ratepayer Advocate) joined with MAPSA in seeking reconsideration of the customer response card issue and further seeks reconsideration of the mechanics of the Technical Implementation Task Force (Task Force). Conectiv Power Delivery, GPU Energy, Public Service Electric & Gas Company and Enron Corporation submitted comments on the CAS implementation schedule. On March 1, 2001, the Board waived the 60 day timeframe set forth in N.J.A.C. 14:1-8.7 to act on the motions for reconsideration.

BACKGROUND

By Orders dated December 6, 2000 and December 22, 2000, the Board approved, with modifications, the Stipulations dealing with customer account services in the territories of: (i) New Jersey Natural Gas Company ("December 6, 2000 Order"); and (ii) Conectiv Power Delivery, Public Service Electric and Gas Company and GPU Energy ("December 22, 2000 Order"). The filed Stipulations provided that NJNG, Conectiv, GPU and PSE&G would provide a customer response card as a one-time bill insert to customers to assist third-party suppliers ("TPSs"), registered aggregators and government entities in locating and marketing to interested customers. Those customers interested in receiving marketing information would complete the customer response card. This information would then be made available to licensed suppliers, private aggregators and governmental entities. With regard to this issue, the Board conditioned approval of the Stipulations on deferring the issues and proposals dealing with the customer response card for consideration in the context of the revised Consumer Protection and Anti-Slamming Standards rulemaking (The Readoption of

N.J.A.C. 14:4-1 through N.J.A.C. 14:4-4, Docket No. AX00080582). The December 6 and December 20, 2000 Orders also set forth procedures for the resolution of emergent technical issues related to the implementation of CAS.

MOTIONS FOR RECONSIDERATION

Customer Response Card

The MAPSA motion asks that the Board allow the terms of the Stipulations to govern. In the alternative, MAPSA would consent to implementation of the customer response card provisions for licensed suppliers and private aggregators. MAPSA argues that unless parties agree to changes to a Stipulation made by the Board, the Board may not lawfully order such changes without providing parties their due process rights. MAPSA further argues that the customer response card mechanism is an efficient way for interested customers to express their interest in receiving competitive proposals.

MAPSA recognizes the Board's current authority over data released to licensed suppliers and private aggregators. In addition, MAPSA indicates that because of the current discussions in the Legislature over the public's right to access government records, the Board may want to move more cautiously where confidential data is being released to government entities. Therefore, MAPSA would be satisfied with the customer response card being implemented for only licensed suppliers and private aggregators.

The Ratepayer Advocate's motion offers arguments similar to MAPSA with respect to the customer response card. However, the RPA argues for approval of the customer response card provision in its entirety, i.e., including making data available to government entities. In addition, the RPA indicates that there is no date certain for the Consumer Protection and Anti-Slamming Standards rulemaking, in which context the Board was to consider this issue.

Technical Implementation Task Force

The Board's December 6 and December 22, 2000 Orders approved the creation of the Technical Implementation Task Force to resolve emergent technical issues that threaten the CAS implementation schedule. The Orders state that:

....when emergent technical issues arise pertaining to this Stipulation, which would require immediate Board attention in order to maintain implementation schedules and which cannot await the next scheduled Board meeting, the Board HEREBY AUTHORIZES the President of the Board to act on its behalf, to review and, when possible, rule on contested technical implementation issues. However, prior to such ruling, the issue shall be summarized in writing and distributed to all Commissioners and appropriate staff. If within one day of such distribution, no other Commissioner requests that the matter be considered by the full Board at an agenda meeting, the President of the Board shall issue

a written ruling, which shall be provided to all Commissioners. If no other Commissioner objects within one day of receiving the ruling, the ruling becomes effective without further Board action. If there is an objection, the full Board shall consider the issue at its next meeting. (December 6, 2000 Order p.6; December 22, 2000 Order p.7)

The RPA requests that the Board rescind the authority given to the President of the Board to rule on contested technical implementation issues as chair of the Technical Implementation Task Force. The RPA states that the Board “expanded and modified the Stipulation by authorizing the President of the Board to act on its behalf.” The RPA argues that the Stipulation provides for a Task Force to resolve disputes through negotiation and does not authorize a special review process by the Board. The RPA also states that “single Commissioner” ruling power has not been authorized by the Legislature.

Utilities’ Response

By letter dated January 12, 2001, Conectiv, GPU and PSE&G jointly responded to the MAPSA motion. The utilities do not oppose or support the MAPSA motion. Rather, the utilities comment on the 120-day time period for implementation of enhanced utility consolidated billing, which was approved in the Board’s Order. The utilities indicate that, because of the motion, there exists the possibility that a party may request a return to the litigation process and that the Board’s December 22, 2000 Order cannot be considered as final. Therefore, the utilities unilaterally declare suspended meetings which staff has scheduled to implement the terms of the CAS Order and “consider the 120-day time period to be tolled.”

Enron Comments

By letter dated January 18, 2000, Enron Corporation (“Enron”) responded to the utilities’ response. Enron cites N.J.A.C. 14:1-8.7(d), which states that “the filing...of any motion...shall not operate as a stay of the Board’s decision or order,” as reason why the 120 day time period cannot be tolled. Therefore, Enron asks that the CAS implementation meetings continue and that the Board act promptly on the pending motions.

DISCUSSION AND FINDINGS

Customer Response Card

The Board’s original concern with the customer response card was largely with the protections afforded to customer information. The MAPSA motion seems to recognize the distinction between government entities, licensed suppliers and private aggregators, in that MAPSA would accept a decision that would reinstate the customer response card with information only being made available to licensed suppliers and private aggregators.

The Electric Discount and Energy Competition Act requires that electric power

suppliers, gas suppliers and gas and electric utilities not disclose or transfer proprietary information without the written consent of the customer. (N.J.S.A. 48:3-85). The Board's current Consumer Protection Standards have similar requirements. (N.J.A.C. 14:4-3.8). At the current time, customers may authorize the release of their utility information to anyone they designate. However, the Board is concerned about the dissemination of this information after the customer has authorized its release. Standards regarding the release of customer information by private and government aggregators are expected to be addressed in the anticipated proposal of Consumer Protection and Anti-Slamming Standards rulemaking. Along with the Board's authority to license, register and penalize suppliers and private aggregators, these protections are sufficient for the release of customer information to licensed suppliers and private aggregators.

An area of concern, however, involves the Legislature's continuing deliberations regarding access to public records. MAPSA alludes to this same concern in its motion. At this time, the status of any new public disclosure laws, and their applicability to customer utility records that have been legally obtained by government entities, is unclear. The Board believes that it would be prudent to provide interested municipalities an opportunity to comment on whether they have, and will continue to have, the ability to treat customer utility information as confidential. The Board notes that no government entity was a party to the CAS proceedings. For this reason, the Board's current approach of considering the release of information from the customer response cards to government entities as a part of the Consumer Protection and Anti-Slamming Standards rulemaking is still advisable.

Technical Implementation Task Force

The second issue before the Board is the RPA concern over the Technical Implementation Task Force. While the Board's previous Order does not specifically reference the negotiation process, since the Board did not specifically modify that paragraph, it is implicit that the chair of the Task Force would explore settlement opportunities with the parties. If negotiations were unsuccessful, it is further intended that the chair of the Task Force would follow the decision-making procedures in the Board's Order only if the parties were agreeable to that process. In fact, the technical issue in dispute would never be considered by the Task Force unless the parties involved indicate, during the working group process, that the issue is one that is appropriate for resolution, and that the parties preferred a negotiated process to their legal alternatives. Finally, contrary to the RPA's assertions, the Board did not modify the Stipulation in this area. However, the Board did provide a mechanism, with the consent of the parties, to bring Task Force issues, which cannot be successfully negotiated, to a prompt resolution. This is within the Board's jurisdiction, and, as indicated above, would be an alternative, voluntary process. The Board SO CLARIFIES its December 6, 2000 and December 22, 2000 Orders.

Implementation Schedule

With regard to the Conectiv, GPU, PSE&G and Enron comments on the 120 day implementation schedule, the Board strongly encourages the parties to proceed expeditiously with the implementation process. The Board realizes that 120 days would be an aggressive schedule without interruptions. However, as a result of the pending motions, Staff canceled implementation meetings previously scheduled for

January 19, January 23, February 22 and February 28, 2001 due to utility objections, and therefore, enhanced utility billing will not likely be available as soon as previously envisioned. The Board, through Staff, will monitor the progress of this Working Group and take further action, if necessary.

After reviewing the arguments, and for the foregoing reasons, the Board APPROVES the customer response card with information being made available to licensed suppliers and private aggregators. The Board DENIES the MAPSA and RPA motions with respect to the customer response card for information to be used by government aggregators. The Board defers the dissemination of customer information from customer response cards to government aggregators until such time as they will be able to address, in the context of the Consumer Protection and Anti-Slamming Standards rulemaking, the extent to which they are able to ensure the confidentiality of such information under any applicable public right to know laws. In the event that a government aggregator needs to receive such information prior to the rulemaking, the government aggregator shall file a petition with the Board demonstrating its ability, under current law, to maintain the confidentiality of such information. The Board encourages interested government entities to review the proposed Consumer Protection and Anti-Slamming Standards when they are published for comment, and respond to that rulemaking proposal. The Board will consider use of the customer response card by government aggregators again as part of that proceeding. By inclusion on the attached service list, the Board is providing this Order to those public entities, which the Board believes have an interest in government aggregation.

The Board DIRECTS Staff to informally report on the progress of the CAS Implementation Working Group on a periodic basis, and alert the Board to any delays that might warrant further action. At that time, the Board, if necessary, will initiate further action on its own.

DATED: 4/27/01

BOARD OF PUBLIC UTILITIES

BY:

(SIGNED)

CAROL J. MURPHY
ACTING PRESIDENT

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

ATTEST: (SIGNED)
FRANCES L. SMITH
SECRETARY